No. 01-1106

In the
SUPREME COURT OF THE UNITED STATES

CITY OF PARMA, OHIO,
Petitioner

v.

CLEVELAND BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, AND THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
for the Sixth Circuit.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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OPINION BELOW AND JURISDICTION

The Opinion of the Sixth Circuit reversing the district court's grant of summary judgment in favor of Petitioner Parma is reported at 263 F.3d 513. Plaintiffs-Respondents agree with the Petition that it was timely filed, and that this Court has jurisdiction under 28 U.S.C. 1254(1) to grant or deny the Petition. Pet. 1. The decision of the district court granting summary judgment is not published.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III of the Constitution limits the jurisdiction of federal courts to "Cases or Controversies." Petition. The relevant provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et. seq. ("Title VII") are set forth in the Statutory Appendix.

STATEMENT

1. The Underlying Facts.

Parma is a City adjoining Cleveland with a population that was less than 1% black in 1970, and less than 1% black in 1990. Pet. App. at 6a. Effective December 6, 1976, Parma provided by Ordinance that "No person shall be appointed or employed by the City of Parma unless such person is a bona fide resident of Parma." Pet. App. 69a. The Ordinance also specified that "All persons appointed and/or employed after the effective date of this ordinance shall maintain their residence within the City of Parma." *Id.* That Ordinance was signed by Mayor John Petroska. *Id.*

In 1980, Parma was found by the United States District Court for the Northern District of Ohio to have engaged in housing practices that discriminated purposefully against blacks, based on the conduct and the ordinances of Parma under the leadership of Mayor Petroska. Pet. App.5a-6a; JA 939-950. United States v. City of Parma, 949 F. Supp. 1049 (N.D. OH 1980), aff'd as to liability. 661 F. 2d 562(6th Cir. 1981), *cert. denied* 456 U.S. 926. Mayor Petroska publicly opposed proposed public housing in Parma and equated public housing with housing for blacks and particularly for residents of the "East Side of Cleveland" who

are predominantly black; and the president of Parma's City Council stated publicly that "I do not want Negroes in the City of Parma." 949 F. Supp. at 1068-1073 and 1077-1081, quotes at 1079.

On April 7, 1981, Mayor Petroska promulgated and published an Affirmative Action Policy for Parma, stating its intent was to take such "measures as it deems appropriate to eradicate" every vestige of discrimination from its employment practices. J.A. 939, 942. While that Policy stated that it "does require vigorous action to locate and attract qualified minorities", the Policy provided that applications must be obtained from Parma City Hall, and that "Job openings will be posted on the bulletin board located in the main lobby" and in other public areas where all city ordinances are posted. J.A. 948. The only reference to recruiting was a statement that "All sources of recruitment will be provided copies of the City's Affirmative Action Program and will be encouraged to actively recruit with the Policy and Plan in mind." *Id.* No external sources of recruitment were identified.

In 1988, Parma hired its first black employee, a resident of Parma when she applied, and she was Parma's only black employee out of more than 460 full time employees, a work force which was less than one fourth of one per cent black. Pet. App.7a. In that year, Parma modified its residency requirement to make it a "move-in" requirement, whereby applicants from Cleveland and other neighboring communities could apply, if they agreed to move and establish "permanent" residence in Parma within 18 months. Pet. App. 70a. In 1995, Parma amended the Ordinance again to provide that an employee could live anywhere within a fifteen mile radius of Parma. In 1996,

Parma extended the radius to eighteen miles. Pet. App. 10a-11a.

In 1996, Parma employed only two (2) blacks (the resident clerical employee hired in 1988 and one police officer hired in 1992) out of 464 full time employees, and no blacks out of approximately 314 part time employees, for a total municipal work force of approximately one fourth of one percent black (0.26%). Pet App. 7a Of the 32 new employees hired in 1996, not one was black. Pet App. 7a.

In contrast, the work force of private employers in Parma in 1990 was 9.5% black; the private work force in the Cleveland Metropolitan Area was 15.5% black, and the municipal workforce available to Parma was approximately 19.6% black, because blacks have traditionally and still work disproportionately more in government than in private industry, indicating "'no meaningful probability that the event has occurred by chance.'" Pet App. 8a-9a. The chance that Parma would hire no black employees out of the 32 full time employees was between 2.9 and 7.5 standard deviations from the proportion expected by chance, so that there was "'very little probability that the failure to hire any blacks was due to chance." Pet App. 9a-10a.

Of the 28 white applicants who secured employment from Parma in early 1997, 25 of them were residents of Parma. J.A. 12a. Similarly, of the 13 full time positions posted for new hires, from November 20, 1995 through March 8, 1996, 6 were filled by former part-time City employees and 2 more were filled by transfer or promotion. *Id.*

Parma distributed and displayed posters and brochures directed at minorities at Cleveland State

University and at two community colleges, and listed scheduled civil service examinations not only in the *Cleveland Plain Dealer* and the *Sun* newspapers, but also in the *Communicator* and the *Call & Post,* newspapers targeted at Cleveland's black community. J.A. Pet 12a.

The NAACP is a voluntary association devoted to the elimination of discrimination and racial prejudice in this country, improving the social and economic status of minority groups and securing equal opportunities for blacks and other minorities. Persons who join and pay dues are considered members. It has branches throughout the United States and seeks to accomplish its goals by litigation as well as by other means. Pet. App. 67a.

2. The Proceedings in the District Court.

a. Proceedings Prior to Decision. After conducting an informal investigation and filing a charge with the Equal Employment Opportunity Commission ("EEOC") earlier in 1990 (Charge No. 220900841, J.A. 193), and receiving a right to sue letter, the NAACP filed this suit against Parma under Title VII on Aug. 6, 1990. J.A. Pet. App. 4a. The Complaint alleged that Parma engaged in a pattern or practice of discriminatory employment practices against blacks, including discrimination in recruitment and hiring, and specifically recruitment practices which advise residents, and friends and relatives of incumbent employees, of employment opportunities, without advising black persons in the relevant labor market of such opportunities, and by practices favoring residents and friends and relatives of incumbent employees over non-residents and others, and by use of selection procedures that have a discriminatory impact against blacks and are not shown to be job related. J.A. 4a and 13a-15a.

The case was assigned to Judge Frank J. Battisti that day, under the district court's related case procedures. Parma filed a motion to reassign the case to another judge, which was denied, and Parma filed a notice of appeal in September 1990, and asked the Sixth Circuit to consider the appeal as a Petition for a Writ of Mandamus. The appeal was dismissed on the NAACP's motion on February 13, 1991. JA 123 and 142-143.

On December 28, 1990, Parma filed its answer. J.A. 5, Docket #5. It raised no defense or other contention about the inadequacy of the EEOC charge or other lack of notice of the NAACP's allegations in contained in the complaint (para. 14(g)) challenging the lawfulness of its tests for police officer, firefighter and other civil service examinations on grounds of their adverse impact against blacks and lack of validity.

In 1991 the parties engaged in extensive written discovery, took numerous depositions, and filed motions to compel, for a protective order, for leave to amend, and for additional discovery time, and for additional time within which to file dispositive motions. Docket #s 17-67. Among the depositions taken by the NAACP were those of Parma's civil service officials and one of its expert witnesses about the adverse impact of those tests and the lack of validity evidence. Pet. App. 45a-47a. No objection was raised by Parma as to a possible lack of relevance of those questions based upon lack of notice in the EEOC charge. *Id.*

On September 25, 1991, the defendant moved to dismiss the action for lack of standing and lack of ripeness. Docket # 55. The NAACP filed a motion for partial summary judgment in November, 1991, and on December 12, 1991, the district court ordered that the plaintiffs submit "such

further particularized allegations of fact" within ten days, and the NAACP filed an amendment to their complaint on December 20, 1991. Docket #s. 81-82.

On December 30, 1991, Parma moved for summary judgment and filed its opposition to the NAACP's motion. Docket #83. On October 1, 1992, the district court held a status conference with the parties, and on October 3, 1992, the NAACP filed a motion for leave to file a 2d Amended Complaint, which Parma promptly opposed. Dockets #103-105.

The district court per Chief Judge Battisti held another status conference on June 16, 1994, and set a schedule for supplemental briefing . After Judge Battisti's death, the case was transferred to Senior Circuit Judge Robert Krupansky on November 1, 1994. Pet App. 5a, fn. 1.

On January 1, 1996, the case was reassigned from Judge Krupansky to Judge O'Malley, who denied the motion of Artis Tomblin to intervene on April 15, 1996 and on April 18, with the agreement of the parties, denied all pending motions, without prejudice, and on June 16, 1996 referred the case to mediation. J.A. 15. Parma moved twice for extensions of the time for mediation, and the time for mediation was extended to January 27, 1997. J.A. 15-17. The mediation efforts were unsuccessful. Following a status hearing before Judge O'Malley on January 29, 1997, the parties noticed and took further depositions in February and March, 1997.

Parma filed a motion for summary judgment on March 26, 1997, and the NAACP filed a cross-motion for partial summary judgment on April 28, 1997. Parma filed a motion to strike all references to the testimony of the

NAACP's expert witnesses Dr. Seberhagen and Herbert Hammerman in the NAACP's opposition to Parma's motion for summary judgment, and also moved to strike an affidavit of Ronda Crayton. J.A. 18-19. Briefing on those motions was complete by July 21, 1997. J.A. 19.

Parma argued on summary judgment that the suit was untimely because it was not filed within 300 days of the enactment of the 1988 amendment to its ordinance. But Parma did not raise any argument on summary judgment that it did not have notice in that charge of plaintiffs' allegation in para. 14(g) of the Amended Complaint that Parma's use of unvalidated examinations had a discriminatory impact in violation of Title VII. See Supplement to Supp. App. 1-25. On one page of its Memorandum in Support, Parma argued that the case was moot because "Parma's hiring and recruitment program is in compliance with the law." Supp. to Supplemental Joint Appendix at 25. It cited no documents or cases in support of that contention.

b. The District Court's Decision Granting Parma Summary Judgment. On March 28, 1998, the district court (per Judge O'Malley) entered a Memorandum Opinion and Order holding that the claims of unlawful tests had not been properly raised in the EEOC charge, and that the claims of the NAACP were moot and that the NAACP lacked standing; and it granted Parma's motion for summary judgment and denied the NAACP's motion.. Pet. App.62a-126a.

1) The district court ruled that first the only issues before it were allegations of preference for residents of Parma and the friends and relatives recruitment system, because the EEOC charge did not mention use of written "tests" and the complaint only alleged use of "unvalidated

selection procedures that have the effect of disproportionately excluding from employment those few blacks who" receive notice of employment opportunities (Pet. App. 81a-86a). The district court raised this issue *sua sponte*, for Parma had not raised any objection that the use of unvalidated tests was not at issue under the complaint in its Answer or by objections during the NAACP's depositions of its civil service officials and testing expert.

2) On the issue of standing, although it recognized that this kind of suit was consistent with the purposes of the NAACP (Pet App. 67a), the district court held that a "'plaintiff must maintain standing throughout all stages of his litigation'" and that "'standing is evaluated at the time it is challenged.'" Pet App. 112a. In doing so, it quoted from and relied upon *City Communications, Inc. v. City of Detroit*, 888 F.2d 1081, 1086 (6th Cir. 1989), which was not a case arising under Title VII, and attempted to distinguish *Senter v. General Motors Corp.*, 532 F. 2d 511, 520 (6th Cir. 1976) on the grounds that it was a class action suit brought under Title VII. Pet App. 112a.-113a. It ruled that each of the members identified by the NAACP as having been harmed by Parma's practices had failed to maintain both membership in the NAACP and efforts to apply for positions with Parma, so that the NAACP lost standing to prosecute the claims of discriminatory employment practices. Pet. App. 103a-118a.

3) On the issue of mootness, the district court ruled that this suit was like suits that challenge an ordinance or other legislative enactment, and that because Parma had in 1995 repealed the portion of its residency ordinance requiring that out of town applicants become residents of Parma, "Parma has given the NAACP what it sought", and there is no reason to expect that Parma will re-enact that provision of law. Pet App. 87a-91a. In addition, the district

court ruled that Parma had "irrevocably eradicated" the effects of its prior residency requirements because it stopped hiring from residents-only lists; and because it advertised in newspapers of general circulation and in *The Call & Post* newspaper and engaged in other recruiting efforts. Pet App. 91a-92a.

In its Judgment Entry of March 30, 1998, the district court granted Parma's motion for summary judgment and denied the motion of the NAACP for partial summary judgment. Pet. App. 62a-63a.

The NAACP filed a timely motion to reconsider or alter the Memorandum and Order of March 30, 1998, but that motion was denied on March 22, 1999. JA 84-88. The NAACP's notice of appeal was filed on April 20, 1999.

3. The Decision of the Court of Appeals.

The United States Court of Appeals for the Sixth Circuit reversed the grant of summary judgment and remanded the case for further proceedings consistent with its decision. Pet. App. 3a-49a. That Court ruled that standing is to be determined as of the date suit is filed, and not at the time standing is challenged. Pet. App. 21-25. It then determined that the NAACP submitted evidence showing that Artis Tomblin, a member of the NAACP, had been injured by Parma by the time the complaint was filed, and evidence that Parma had failed to notify Tomblin of civil service examinations as was its stated practice, and that he suffered continuing effects from that conduct of the kind warranting injunctive relief. Pet. App. 26a-35a. It also noted that Parma did not dispute that the interests at stake in this case are germane to the NAACP's purpose, or that the NAACP's claims for prospective relief do not require the

participation of individual members. Pet. App. 35a, n. 19. On this issue, the decision of the Court of Appeals was unanimous. The decision expressly refrained from deciding the possible standing of Collins, Childress, Blanton and McIntosh, who were not members of the NAACP at the time the complaint was filed. Pet. App. 35a, n. 19.

On the issue of mootness, the Court of Appeals ruled that Parma had failed to prove that its allegedly discriminatory recruiting, selection and hiring practices could not be expected to recur, and "Parma failed to show that its alleged discriminatory practices had ceased..." Pet App. 36a-39a. The Court also ruled that the plaintiffs had submitted evidence showing that Parma's recruitment efforts "arguably resulted in no change in the racial composition of Parma's municipal workforce." Pet. App. 40a-43a. It was on the issue of mootness that Judge Boggs dissented. Pet. App. 49a-50a. See below, p.7.

On the question of breadth of the EEOC charge, the Court of Appeals also ruled that the district court erred "by limiting the scope of this action to a challenge to Parma's former residency requirement and alleged practice of limiting the recruitment of municipal employees to word-of-mouth through friends and relatives of Parma's municipal employees by excluding any challenges to the testing procedures used by Parma, because of the charge's express reference to hiring practices concerning "*civil service jobs*" and to the verb "*select*" in its allegation of how Parma discriminated. Pet. App. 43a-45a. The Court of Appeals ruled that the NAACP's EEOC charge had placed Parma on notice of its claim that Parma was using unlawful civil service examinations for police officers and firefighters and other civil service personnel and that the NAACP depositions of its civil service officials and its police testing

expert had also placed Parma on notice and Parma raised no objections based upon lack of notice in the district court. Pet. App. 43a-48a. The Court of Appeals also rejected Parma's contention that the Complaint was untimely because it was not filed within 300 days of the date of the 1988 amendment to its residency ordinance, because the NAACP alleged that a variety of Parma's discriminatory recruitment, selection and hiring practices are continuing. Pet. App. 48a-49a.

Circuit Judge Boggs agreed with the panel's decision that the NAACP had standing to sue when it brought suit, and that the claims have not become moot solely because of the actions taken by Parma, but he dissented from the Court's decision on the ground that the claims of the NAACP have become moot because Tomblin had lost personal interest in the case by allowing his membership in the NAACP to lapse and that he no longer had a personal stake in securing employment with Parma, and therefore no personal stake in the outcome of the case. Pet. App. 49a-61a.

Parma filed a petition for rehearing with a suggestion for rehearing en banc, and argued that the panel in this case improperly overruled the Sixth Circuit's decision in *City Communications v. City of Detroit, supra.* No judge in active service requested a vote on the suggestion for rehearing en banc, and the petition was referred to the original panel, and was denied. Pet. App. 2a. Judge Boggs would have granted rehearing for the reasons stated in his dissent. *Id.*

REASONS FOR DENYING THE PETITION

There is no conflict between the decision below and the decision of another Court of Appeals, and there is no conflict between the decision below and a decision of the highest court of a State. Nor did the Sixth Circuit decide any

important issue of federal law that should be, but has not been, resolved by this Court. Rule 10 of the Rules of this Court.

Although the Sixth Circuit reversed the district court on the issue of standing as well as mootness, Parma seeks review only on the mootness rulings under Article III.[1] On other issues, the Court of Appeals ruled Parma had failed to show that the discriminatory practices alleged in the complaint had even ceased, much less that the effects of Parma's discriminatory practices had been eradicated. Pet. App.41a-42a. In its rulings on mootness, the Sixth Circuit applied the decisions of this Court to the facts of record in this case on the motion for summary judgment. *County of Los Angeles v. Davis,* 440 U.S. 625, 631 (1979), and cases cited, and *Northeastern Fla. Chapter of the Associated Gen. Contractors Ass'n* , 508 U.S. 656, 662 (1993).

Although Parma repeatedly states that the decision below is in conflict with the decisions of this Court, it fails to show that any conflict between the Circuits in decisions subsequent to *Friends of the Earth v. Laidlaw, supra,* and it fails to show any conflict between the decision below and the decision in that case. Once a plaintiff has established "Article III standing at the outset of the litigation," this Court ruled

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[1] Under Title VII, any person who claims to be aggrieved may bring a charge, and may bring suit once a right to sue letter has been issued. See,42 U.S.C. 2000e-5(b) and (f)(1), SA 2-3 below. Where such language is used, the Courts, including the Sixth Circuit and this Court, have ruled that Congress "intended to define standing as broadly as is permitted by Article III, *Hackett v. McGuire Bros. Inc,* 445 F.2d 442, 446 (3d Cir. 1971); *Trafficante v. Metropolitan Life Ins. Co.,* 409 U.S. 205, 209 (1972) (quoting and relying upon *Hackett* in interpreting the Fair Housing Act); and *Senter v. General Motors Corp. supra,* 532 F.2d at 517.

that "the defendant claiming that its compliance moots a case bears the formidable burden of showing that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc., supra,* 528 U.S. at 180 and 189-190 (quote from 190). The Sixth Circuit's holding on mootness is fully consistent with this most recent decision of this Court on mootness. Parma does not assert any inconsistency between the decision below and *County of Los Angeles v. Davis, supra.* Pet App. 36a-40a. Rather it mentions that case only in passing. Pet. 9. There is no inconsistency between the decision below and the holding of this Court in *Friends of the Earth, supra,* or in *County of Los Angeles v. Davis,* 440 U.S. 625, 631 (1979). While the Petition argues that the Court of Appeals below improperly applied that decision (Pet. at 9), it does not show how or why it is in conflict with *County of Los Angeles v. Davis, supra.*

Parma urges the Court "to reconcile the ongoing debate among the circuits to clarify when standing must be measured, and to explain the relationship between standing and mootness." Pet. at 23. This Court does not to resolve debates by granting review of their language, but to resolve conflicts among the circuits in their interpretations of federal law, and other important issues of federal law that have not been settled by this Court. Rule 10, Rules of this Court. Moreover, this Court in *Friends of the* Earth v. *Laidlaw Environmental, supra,* resolved the conflict between circuits on the confusion between standing and mootness arising in part because of the conflation of the two terms. 520 U.S. at 171. To the extent that the language in earlier decided decisions of other circuits, and particularly in *Powder River Basin Res. Council v. Babbitt,* 54 F.3d 1477, 1485 (10th Cir. 1995) is in conflict with the ruling in *Friends of the* Earth v.

Laidlaw Environmental, supra, that language is no longer viable.

No Court of Appeals has interpreted the decision in *Friends of the Earth v. Laidlaw Environmental, supra,* differently than did the Sixth Circuit below. The two appellate decisions that have applied this Court's ruling in *Friends of the Earth, supra,* have recognized, that while standing and mootness are related, the burden of proof is on the plaintiff to show standing at the outset of the suit, and that there is a heavy burden on the defendant seeking to dismiss for mootness to show that the subsequent events have eradicated the need for relief. *Becker v. Federal Elections Commission,* 230 F. 3d 381, 386, n.3(1st Cir. 2000); *White v. Lee,* 227 F.3d 1214, 1243 (9th Cir. 2000). The only decision subsequent to *Friends of the Earth, supra,* relied upon by the Petition is that in *Landmark Land Co. v. United States,* 256 F.3d 1365, 1380 (Fed. Cir. 2001). Pet. 22. That decision does not discuss or cite the decision in *Friends of the Earth v. Laidlaw, supra.* See, 256 F.3d at 1380. Moreover, that case involved the authority and standing of a federal agency, the FDIC, to obtain a judgment against the United States, not a question of mootness in a case between private parties.

Parma argues that the Court of Appeals erred by failing to take into account conduct by a party other than Parma as a possible ground for considering the case moot, and suggests that the Court of Appeals stated that it considered "only" Parma's conduct. Pet. 6-9. However, the Court of Appeals used the word "only" to modify "subsequent events", and did not limit the actor in those events. Pet. App. 36a. Indeed, approximately a year after the decision in *Friends of the Earth v. Laidlaw, supra,* this Court unanimously held moot a case in which a corporation that

brought suit to challenge the denial of a City license subsequently filed for review by this Court, but had chosen to withdraw its application for renewal of its license and given notice of its intent to close its business before this Court could act upon it. *City News & Novelty, Inc. v. City of Waukesha,* 531 U.S. 278 (2001). In that case this Court noted (531 U.S. 284, n. 1) "the general rule that voluntary cessation of a challenged practice rarely moots a federal case", citing *Friends of the Earth v. Laidlaw, supra,* and earlier decided cases.

In this case, Parma sought to have the case dismissed solely because of its contention that its employment practice was lawful. It sought dismissal for mootness only because "Parma's hiring and recruiting program is in compliance with the law." Supp. to Supplemental Appendix, p. 25 of Parma's memorandum in support of its motion for summary judgment. The Court of Appeals below decided the only mootness issue that Parma raise in the district court, namely that Parma's conduct rendered the case most and ruled to the contrary. The Court of Appeals committed no error in holding that fact to be one on which there was a material and genuine dispute, particularly in light of Parma's failure to hire any blacks since 1992. Pet. App. 36a-43a. The decision below that once a plaintiff association has shown standing based on the interest of one or more members it is not the association's burden to show that their interest continued. Rather it is the defendant's burden to show change in circumstance warranting mootness. That decision below is not a departure from the decision in *Friends of the Earth v. Laidlaw, supra,* or any other decision of this Court.

This Court has recognized that suits by associations are often "advantageous both to the individuals represented and to the judicial system as a whole" and may be superior

class actions in those respects. *United Automobile Workers v. Brock*, 477 U.S. 274, 289-90 (1986). Where an "association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured." *Warth v. Seldin*, 522 U.S. 490, 515 (1975). However, this Court did not identify the Article III requirements for standing until its decision in *United Food and Commercial Workers Union Local 751 v. Brown Group,Inc.*, 517 U.S. 544 (1996). In that case it ruled that where an association has shown that it has at least one member who has been harmed by a practice, and that the relief it seeks is germane to it purposes, there is no Article III requirement that the individuals affected participate in the suit because the association may be an appropriate representative of its members. *United Food and Commercial Workers v. Brown, supra.* 517 U. S at 551-557.

The Questions Presented in the Petition draw a distinction as to Article III standing between situations in which plaintiffs seek an injunction and one in which the claim is for monetary relief. But Congress sought to give associations as well as other plaintiffs the broadest standing possible under Article III, both under Title VII (see footnote 1 above, p. 7) and in the Clean Water Act. See *Friends of the Earth* v. *Laidlaw Environmental, supra,* 528 U.S. at 174, 189-194. Nor is there any requirement that the members of an organization receive a financial benefit from the litigation, because the members of the Friends of the Earth received nothing tangible from the defendant in that case, for the penalties recovered for ongoing violations of the Clean Water Act went to the Treasury of the United States. 528 U.S. at 185-186. Those penalties were relevant only because they tended to abate the allegedly unlawful conduct. Similarly in this case, the members of the plaintiffs, if they

succeed in obtaining injunctive relief, will have deterred and abated the discriminatory practices of Parma that were ongoing when this suit was filed, and which still may be continuing.

The Petition fails to articulate why Article III requires a continuing personal stake in the litigation by the member(s) identified as having been injured, when there are likely to be other members whose injury was of the same kind, just as the Court may change a class representative and replace him or her with another, once a case has been properly started. Judge Boggs' dissent also does not suggest why constitutional standing under Article III by an organization should depend upon continuity in membership of one person, particularly where the plaintiffs have offered evidence of other members who also believed that they suffered as a result of the discriminatory practices of Parma. In this case, the NAACP did in fact offer evidence of other members who had joined the NAACP after suit was filed. See, Pet. App. 35a, n.19.

Once an organization has established standing by showing that it had one or more members who were injured in fact, and that the interests that the organization seeks to protect are germane to the organization's purpose, the "association's litigators will be in a position to serve as the defendant's natural adversary" thus assuring that Article III standing is satisfied. *United Food and Commercial Workers Union Local 751 v. Brown Group,Inc.*, 517 U.S. 544, 555-556 (1996).

CONCLUSION

For the reasons set forth above, this Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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